

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REBEKAH A. LONG,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

CASE NO. C07-5211 FDB

ORDER ADOPTING REPORT
AND RECOMMENDATION
REMANDING FOR FURTHER
ADMINISTRATIVE
PROCEEDINGS

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge that the decision of the Commissioner determining Rebekah Long to not be disabled be remanded to the Commissioner for further administrative proceedings. The Plaintiff concurs with the Magistrate Judge's recommendation for remand for further administrative proceedings. However, Plaintiff objects to the Magistrate Judge's recommendation to affirm in respect to three issues raised in Plaintiff's action. The Commissioner has not filed an objection.

Plaintiff objects to the recommendation that the ALJ's credibility finding be affirmed. Plaintiff asserts that an affirmance would be premature and improper as the medical evidence is to be re-evaluated on remand and the ALJ's credibility finding was intertwined with his analysis of the medical evidence. The Court disagrees. As detailed by the Magistrate Judge, the ALJ's determination is supported by substantial evidence.

Plaintiff objects to the Magistrate Judge's recommendation to affirm the ALJ's evaluation of the


1 examining psychiatrist Dr. Biebuyck. The Court is not persuaded by Plaintiff's argument. As noted by the
2 Magistrate Judge, although Dr. Biebuyck's report obtained objective findings in the form of a mental status
3 examination, these objective findings did not support the ultimate conclusion reached by Dr. Biebuyck
4 regarding Plaintiff's ability to work. This is a valid basis for rejecting the medical opinion.

5 Finally, Plaintiff objects to the recommendation to affirm the ALJ's evaluation of Dr. Brzezinski-
6 Stein's opinions. Plaintiff asserts that these opinions were improperly discounted due to being solicited by
7 Plaintiff's counsel. The Court rejects this argument, as this was but one factor taken into consideration in
8 discounting the opinion of Dr. Brzezinski-Stein. The Magistrate Judge acknowledged that the medical
9 opinions may not be discounted solely on the basis they were solicited by Plaintiff. An additional factor
10 supporting rejection of the medical opinion was the lack of an objective medical basis for the opinions.

11 The Court, having reviewed plaintiff's complaint, the Report and Recommendation of Judge Karen
12 L. Strombom, United States Magistrate Judge, and objections to the report and recommendation, if any,
13 and the remaining record, does hereby find and ORDER:

- 14 (1) The Court adopts the Report and Recommendation;
- 15 (2) The ALJ erred in his decision as described in the report;
- 16 (3) The matter is therefore REVERSED and remanded to the Commissioner for further
17 administrative proceedings; and
- 18 (4) The Clerk is directed to send copies of this Order to Plaintiff's counsel, Defendant's counsel
19 and Magistrate Judge Karen L. Strombom.

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21 DATED this 7th day of April, 2008.

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25 FRANKLIN D. BURGESS
26 UNITED STATES DISTRICT JUDGE
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